Leong Chiew Keong & Anor v Renaissance Resources Sdn Bhd

HIGH COURT (KUALA LUMPUR) — SUIT NO S2-22-332 OF 1996
KAMALANATHAN RATNAM JC
20 SEPTEMBER 1997

Civil Procedure *— Summary judgment — Application for — Claim for fees due in preparation of sale and purchase agreements — Denial of arranged fees — Application for summary judgment — Whether summary judgment should be granted*

The plaintiffs were appointed by the defendant as its solicitors to represent them in the sale and purchase of various real estate properties. After preparing several sale and purchase agreements, the plaintiffs issued an invoice to defendant for their legal fees amounting to RM383,197.37. On the defendant's failure to pay, a writ was issued for the said sum with interest and cost. The defendant filed in its defence contending that it had been agreed between the plaintiffs and one Soon Chye that the plaintiffs' fee would not exceed RM100,000 and that the fees would only be paid to the plaintiffs after the sale and purchase agreements have been approved by the proper authorities. These matters were brought to the deputy registrar pursuant to O 25 and O 14 of the Rules of the High Court 1980 ('the RHC'). Upon hearing the O 14 application, the deputy registrar entered judgment for the sum of RM100,000 with interest at 8% pa from the date of filing of the writ. With regard to the balance of the claim, she ordered that the same be decided at a trial with witnesses. Both the plaintiffs and the defendant appealed against the order of the deputy registrar.

Held, dismissing the appeals:

(1) There was no letter or affidavit to confirm the plaintiffs' submission on Soon Chye's denial on the arranged fees. On this issue alone, the court had sufficient grounds to dismiss the plaintiffs' appeal against the deputy registrar's decision (see p 562G–H).

(2) Failure on the part of the defendant to show to the court that it had written to the plaintiffs, upon receipt of the notice of demand that the sum RM100,000 was only to be paid after the entire work was completed, satisfied the court that there was no merit in the defendant's appeal (see p 563A–B).

(3) The issue that the sale and purchase agreements was subject to the approvals of the proper authorities need not affect the plaintiffs who were not concerned with these approvals. Their fee was for the services which they had rendered (see p 563C–D).

[Bahasa Malaysia summary

Plaintif-plaintif telah dilantik oleh defendan sebagai peguamcaranya untuk mewakili mereka dalam jual beli pelbagai hartanah. Selepas

menyediakan beberapa perjanjian jual beli, plaintif-plaintif telah mengeluarkan invois kepada defendan untuk yuran mereka yang berjumlah RM383,197.37. Atas kegagalan defendan untuk membayar, satu writ telah dikeluarkan untuk jumlah tersebut dengan faedah dan kos. Defendan telah memfailkan pembelaannya dengan berhujah bahawa ia telah dipersetujui di antara plaintif-plaintif dan seorang bernama Soon Chye bahawa yuran plaintif-plaintif tidak akan melebihi RM100,000 dan bahawa yuran hanya akan dibayar kepada plaintif-plaintif selepas perjanjian jual beli diluluskan oleh pihak-pihak berkuasa yang wajar. Hal-hal ini telah dibawa kepada penolong pendaftar menurut A 25 dan A 14 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'). Selepas mendengar permohonan A 14, penolong pendaftar memasukkan penghakiman untuk jumlah RM100,000 dengan faedah pada kadar 8% setahun dari tarikh pemfailan writ. Berkaitan dengan baki tuntutan, beliau memerintahkan bahawa yang sama hendaklah diputuskan di perbicaraan dengan saksi-saksi. Plaintif-plaintif dan defendan merayu terhadap perintah penolong pendaftar.

Diputuskan, menolak rayuan-rayuan:

(1) Tiada surat atau afidavit untuk mengesahkan penghujahan plaintif-plaintif mengenai penafian Soon Chye atas yuran yang diaturkan. Atas isu ini sahaja, mahkamah mempunyai alasan yang mencukupi untuk menolak rayuan plaintif-plaintif terhadap keputusan penolong pendaftar (lihat ms 562G–H).

(2) Kegagalan pada pihak defendan untuk menunjukkan kepada mahkamah bahawa ia telah menulis kepada plaintif-plaintif, setelah menerima notis tuntutan bahawa hanya jumlah sebanyak RM100,000 harus dibayar selepas segala kerja disiapkan, memuaskan mahkamah bahawa tiada merit dalam rayuan defendan (lihat ms 563A–B).

(3) Isu bahawa perjanjian jual beli adalah tertakluk kepada kelulusan pihak berkuasa yang wajar, tidak semestinya menjejaskan plaintif-plaintif yang tidak mengambil berat tentang kelulusan ini. Yuran mereka adalah untuk perkhidmatan yang telah mereka berikan (lihat ms 563C–D).]

Notes

For cases on application for summary judgment, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 4436–4446.

Legislation referred to

Rules of the High Court 1980 O 14, O 25
Solicitors' Remuneration Order 1980

TC Lim (*CK Leong* with him) (*CK Leong & TC Lim*) for the plaintiffs.
Aznim bte Azhar (*Tengku Mohamed & Alan Lim*) for the defendant.

Cur Adv Vult

Kamalanathan Ratnam JC: The plaintiffs are partners of a legal firm called CK Leong & TC Lim. Sometime in December 1995, the defendant appointed the plaintiffs as its solicitors to represent the defendant in the sales and purchases of various real estate properties which they tabulated under annexures A, B and C. All the said properties were purchased simultaneously and jointly. On 9 January 1996, the defendant executed various sale and purchase agreements which were prepared by the plaintiffs and the respective vendors' solicitors. On the same day, the plaintiffs issued an invoice to the defendant for their legal fees amounting to RM383,197.37. On the defendant's failure to pay, a writ was issued on 5 July 1996 for the said sum with interest and costs. A defence was filed on 9 August 1996. In it, the defendant contended that whilst the plaintiffs were introduced to it by one Soon Chye, the sale and purchase agreements signed on 9 January 1996 would be effective only when the proper authorities approved the sales. The defendant also admitted that it was agreed between the plaintiffs and Soon Chye that the plaintiffs' fees would not exceed RM100,000. Thereafter, on 31 January 1997, the plaintiffs filed a summons for directions (encl 6) pursuant to O 25 of the Rules of the High Court 1980 ('the RHC'). On 12 March 1997, the plaintiffs issued out an application under O 14 of the RHC for summary judgment and the same was set for hearing on 1 April 1997. In the meantime, both counsel appeared before the deputy registrar on 20 March 1997 and obtained various directions on encl 6. It was agreed by the plaintiffs that they would take one day for trial and would have three witnesses. The defendant said it would take two days and would also have three witnesses. The plaintiffs agreed that they would within 30 days of the order, file and serve their affidavit verifying list of documents, and that examination of the said documents referred to in the affidavit would take place 14 days thereafter.

The O 14 hearing on 1 April 1997

In the meantime, the application for O 14 came up for hearing before the deputy registrar on 1 April 1997. The deputy registrar then entered judgment for the sum of RM100,000 with interest at 8% pa from 5 July 1996, that is the date of filing of the writ. With regard to the balance of the claim, she ordered that the same be decided at a trial with witnesses. She directed each party to pay its own costs. Against this order, both the plaintiffs and defendant appealed before me.

The appeal before me — encl 13

At the commencement of the appeal (encl 13), Mr TC Lim who appeared in person with Mr CK Leong, informed the court that the sum of RM383,197.37 which he had arrived at was based on the Solicitors' Remuneration Order 1980. Midway through his submission and whilst attempting to show the court how the figure claimed was calculated, he admitted that there was an amendment to the Fourth Schedule with

regard to the calculation of the fees and that he did not have the same with him. As both parties had informed the court that they were ready to proceed with the appeal, the court was moved to comment that the appellants were not in fact ready with their appeal.

At this stage, Mr CK Leong interjected by saying that the scale fees was not the matter of contention.

What was in dispute was whether there was an agreement to fix the fees at RM100,000. He stated that he had not thought of proving the quantum as the figure was not in dispute. Upon hearing this, Cik Aznim for the defendant quickly put the issue at rest by saying that the full quantum of RM383,197.37 was in dispute. Mr Leong continued by submitting that even though the invoice had been issued in January 1996, the defendant had never raised any objections to the invoice. Only when the plaintiffs sent the letter of demand, did the defendant reply by stating that there was an agreement to fix the legal fees with Soon Chye and that the agreement was that the legal fees would not exceed RM100,000. At this stage, Mr TC Lim said that the plaintiffs had written a letter to the effect that the plaintiffs had spoken to Soon Chye who denied such an agreement. When I asked Mr Lim if there was any letter or affidavit from Soon Chye to this effect, he readily admitted there was none. He however added a rider by saying that Soon Chye was an interested party. This prompted me to ask again if there was any evidence before me to that effect. Mr Lim again admitted there was none.

I then stopped Mr Lim from further proceeding. I also did not wish to hear the respondent. I was satisfied that since the entire quantum was in dispute, the plaintiffs would have to prove the same. Needless to say if the manner in which the plaintiffs calculated the sum of RM383,197.37 had been worked out in any affidavit and supported with the amended Fourth Schedule to the Solicitors' Remuneration Order 1980, the plaintiffs could have proceeded with this O 14 application. But for the admission of the defendant that the sum as agreed to was not to exceed RM100,000, I would have dismissed the O 14 application, as indeed I am sure, would have the deputy registrar. Further, the defendant has pleaded that the fees for services were arranged by Soon Chye. The plaintiffs said they spoke to Soon Chye who denied this. Since there was no letter or affidavit from Soon Chye to confirm the plaintiffs' submission, surely this issue alone ought to suffice for this court to dismiss the plaintiffs' appeal against the learned deputy registrar's decision, which I did with costs.

Enclosure 14

This was an appeal by the defendant against the deputy registrar's award of RM100,000. It was the defendant's submission that there was a clear understanding between the plaintiffs and Soon Chye upon the plaintiffs' appointment as solicitors, that the legal fees would be agreed upon by both parties and not fixed according to scale fees. That was why the defendant was disputing the entire invoice. It was agreed that the maximum fees of RM100,000 was only to be paid to the plaintiffs after the completion of the

A sale and purchase transactions. At this juncture, I asked Cik Aznim if the defendant had written to the plaintiffs, upon receipt of the notice of demand, that the sum of RM100,000 was only to be paid after the entire work was completed. Whilst contending that there was such a letter, learned counsel for the defendant was unable to show to the court if it was indeed exhibited in any of the affidavits. On this alone, I was satisfied that there was no merit in the defendant's appeal. I did not wish to hear the plaintiffs on this.

There were altogether 96 pieces of land transacted. The plaintiffs performed their services. The issue that the sale and purchase agreements was subject to the approvals of authorities, namely the FIC, the purchasers' shareholders and the land office as stated in the sale and purchase agreements dated 9 January 1996, need not affect the plaintiffs who are not concerned with these approvals. Their fee is for the services which they had rendered. The defence is a clear admission that a sum not exceeding RM100,000 was the agreed fee for services rendered. Notwithstanding the fact that Soon Chye did the negotiations, the defendant has already held out to the world at large that the said Soon Chye had authority either as its servant or agent, to bind the defendant. Nowhere in the defence has the defendant contended that the said Soon Chye was not its servant or agent. On the contrary, it admitted being introduced to the plaintiffs by Soon Chye and that Soon Chye negotiated the fees. From this admission, the defendant cannot resile. I therefore had no hesitation in dismissing encl 14 with costs.

Appeals dismissed.

Reported by Mohd Rizal Abidin